



**THE CITY OF NEW YORK
LAW DEPARTMENT**

Hon. Sylvia O. Hinds-Radix
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January 25, 2024

Via ECF

Hon. Lorna G. Schofield
United States District Court, Southern District of New York
Thurgood Marshal United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Kelly MacNeal v. New York City Commission on Human Rights, Sapna Raj and Jacqueline Rios*, Case No. 23-cv-05890-LGS

Dear Judge Schofield:

As counsel for Defendants in the above-referenced action, we write to request leave to file a motion to dismiss.

Defendants seek to dismiss the complaint, as even construing the limited number of facts alleged as true, plaintiff fails to provide any basis upon which this Court can grant relief.

According to the facts alleged in the complaint, on April 12, 2022, Ms. MacNeal brought concerns about her landlord and her downstairs neighbor to the New York City Commission on Human Rights ("CCHR"), that the CCHR assisted Ms. MacNeal in a mediation process with her landlord, but that the mediation was unsuccessful and left Ms. MacNeal dissatisfied and unhappy. Ms. MacNeal does not allege that the CCHR discriminated against her on the basis of any protected characteristic, including disability or race. While Ms. MacNeal alludes to alleged statements by Commission staff concerning race, she does not allege that she was treated less well than others, otherwise subject to discriminatory treatment or remarks, or discriminatory animus. The crux of Ms. MacNeal's dispute with CCHR and its staff appears to

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be that it failed to successfully resolve Ms. MacNeal's conflicts with her landlord and downstairs neighbor, which does not support any of her causes of action against CCHR.

Ms. MacNeal alleges claims pursuant to 18 U.S.C. § 242, 42 U.S.C. § 2000a, 42 U.S.C. § 12101 *et seq.*, 42 U.S.C. § 1981, New York State Civil Rights Law § 1 *et seq.*, and New York City Human Rights Law § 8 *et seq.*

All of Ms. MacNeal's causes of action should be dismissed because she does not allege discrimination based on disability, race or any other protected characteristic. The cause of action pursuant to 18 U.S.C. § 242 additionally fails because Ms. MacNeal does not identify that she was subject to any criminal punishment by any named Defendant. Similarly, the 42 U.S.C. § 2000a cause of action should be dismissed as a matter of law because the CCHR is not a "public accommodation" as defined under Section 2000a. Ms. MacNeal's 42 U.S.C. § 1981 cause of action also fails as a matter of law because this statute does not provide a private right of action. Even if the § 1981 claim were construed to arise under § 1983, the claim fails because Ms. MacNeal fails to allege that any of Defendants' conduct was performed pursuant to a municipal policy or custom, and fails to identify any constitutional right that was violated. Accordingly, the Complaint should be dismissed in its entirety with prejudice.

Thus, Defendants write to request for leave to file a motion to dismiss, and propose the following briefing schedule: Defendants' motion to dismiss to be filed by or on February 16, 2024, Plaintiff's opposition to be filed by or on March 15, 2024, and Defendants' reply, if any, by or on March 29, 2024; or such later dates as shall be set by the Court. Ms. MacNeal has consented to February 16, 2024 as the date for Defendants to file their motion to dismiss, but requests that her opposition be due March 22, 2024 and Defendants' reply due April 5, 2024. Defendants do not object to Ms. MacNeal's proposed schedule.

Defendants consequently seek an adjournment of their time to respond to the Complaint from January 22, 2024 to February 16, 2024, or such to later date as shall be set by the Court. No previous requests for adjournment of Defendants' time to respond to the Complaint have been made. Ms. MacNeal has consented to this adjournment.

Respectfully submitted,

Hon. Sylvia O. Hinds-Radix
Corporation Counsel of the City of New York

By:


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-e: Kelly MacNeal